

R E A S O N S

• O F

P R O T E S T,

By Mess. WALKER and STUART,

A G A I N S T

The Acts and Proceedings of the Lord
Provost and other Magistrates, and of
a Part of the Town-council of Edin-
burgh,

With respect to

The PRESENTING and SETTLING a MINISTER
in the said City.

To which is annexed,

An ACT of the TOWN-COUNCIL, June 6. 1750,
relative to the subject.

E D I N B U R G H:

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REASONS of PROTEST offered by Mr *John Walker* one of the present Bailies, and Mr *James Stuart* late Bailie, and one of the present Counsellors of the City of Edinburgh, for themselves, and in name of all those who shall adhere to them, against the *pretended* Acts and Proceedings of the Lord Provost and other Magistrates, and of a part of the Town-council of the said City, on the 1st of *December*, with respect to the presenting and settling a minister in the said city, in the room of Mr *John Hyndman*; deceased.

I. **A** Gainst the motion made by the Lord Provost in council, for repealing or rescinding the act of council of the 6th of June 1750, and the resolution made thereupon to repeal the said act, we do protest, That the same is unjust with respect to the community, and incompetent to be done by the council at this time; because, by that act, it is provided, that no motion for calling or settling a minister in this city, shall have any thing done upon it, till such time as it is entered upon record for three weeks; and then, and no sooner, shall the council have it in their power, to proceed to consider, whether it is or is not necessary or expedient, to proceed in supplying the vacancy. That, by the very nature of this act of council, it seems to have

been intended to guard against designing or self-interested men, taking the advantage of their brethren, when necessarily absent, or off their guard, and by surprise taking any step to their prejudice, in an affair of such consequence to the peace, harmony, and prosperity of the city, as the calling of a gospel-minister is.

II. That this act now to be repealed or rescinded, has been constantly in observance, and the invariable rule of procedure, with respect to the settlement of ministers, ever since its date, for now above a dozen of years; and was the result of a most mature deliberation of the magistrates and council, by whom it was enacted; and being a regulation which hitherto has had very good effects, by promoting peace and harmony in the council, ought not to be so abruptly repealed, without any previous notice given to the council, at least to severals of them, that such thing was intended to be done.

III. With respect to the resolution of the council to present a minister to the present vacancy, we apprehend it is not in the power of the council to do so; in regard that by the invariable custom, as well as in consequence of a contract entered into between the town-council and the presbytery, and kirk-sessions of this city, above forty years ago, the method of calling and settling ministers has been by the town-council and general kirk-sessions, in a collective body; and no instance can be given, where the magistrates and council have taken upon them to grant

grant presentations to any vacancy in the city, ever since the happy revolution. And therefore, the method of settling ministers, which has been invariably observed for so long a period of time, and which has had so good an effect, in promoting peace and harmony in the city, ought not now to be altered: and we apprehend the council have no power to do so. And with respect to the decree of the court of session in the 1739, which it is pretended establishes the right of patronage in the magistrates and council, as we had no opportunity to see that decret, to know whether it was a decret upon compearance or not, or that the proper parties were called, and that the Lord Provost refused a week's delay, though urged for, in order that such decree might be considered deliberately; we can only say at present, that this decret must have been in absence, or void and null in itself; because the magistrates and council never hitherto made use of the right thereby pretended to be given them, but, on the contrary, in all settlements of ministers ever since the date of the said decret, the ancient and former method has been observed.

IV. Though the right of patronage were vested properly in the magistrates and council only, which is not admitted, in respect of what has been already observed; a right of patronage in them is to be considered in a very different light from that of a private patron by inheritance. In that case it may be considered as a part of his

estate and private property. But the magistrates and council of Edinburgh, who are chosen annually, can be considered, during their office, as only trustees and guardians for their fellow-citizens and the public: they take an oath of fidelity to the public, when they enter upon their office; and whenever they depart from the liberties and privileges of their fellow-citizens, much more when they infringe and impair them, as we apprehend is done remarkably in this case, we apprehend they are guilty of a breach of the trust committed to them by the community whom they represent.

V. That if the method of settling ministers in this city by presentations be followed, we humbly apprehend, it must have the most fatal tendency, in alienating the minds of the people from attending on the regular stated ministry in our churches, already too much neglected; and to the erecting of different separate places of worship in this populous city. How hurtful this will be to the morals of our people, already greatly corrupted, must be apparent to all disinterested persons, who are not determined to carry their own arbitrary measures into execution, whatever be the consequence: and how destructive it must prove to the revenue of the poor's house, which is mostly maintained by the collections of those that frequent the churches, and cannot be maintained otherwise, must be apparent; the proper revenue of the town being already so much impaired, that all that can be spared from it is *L. 200 per annum*; whereas the voluntary

tary collections at the church-doors amount at
[an average to about L. 1200 yearly.

VI. That the presentation resolved on, is, in our humble apprehension, void, null, and illegal; because it is not true in fact, as set forth in the presentation itself, that it is the act and deed of the council; at least this may be disputed; for nothing can properly be called the deed of the council, but what is submitted to a fair and free debate, and gone about with deliberation. Whereas this deed was contrived by only a part of the council, hatched in private, and kept a secret from the rest, until it was produced by the Lord Provost ready made out in the form it is now in; without being debated, or so much as come to the knowledge of some of the members of the council, who might by their reasoning have convinced the rest of the council, how improper a step this was to be taken, and how destructive to the interest of the city, as well as contrary to the liberty and freedom of their fellow-citizens, which the magistrates and council are obliged in honour to preserve; which conduct we apprehend to be unjustifiable and unprecedented.

And therefore we insist that these our reasons of dissent and protest be recorded and entered in the books of council; upon which we take instruments in the hands of Mr Joseph Williamson, one of the principal town-clerks, this 8th day of December 1762.

JOHN WALKER, B.

JAMES STUART, O. B.

The adherers to this protest were Thomas Hogg, O. B. Deacon Cuninghame of the bakers, Deacon Somerville of the dyers, and Deacon Thomson of the weavers ; Mr William Gibson merchant-counsellor, who also voted against the presentation on Wednesday the 1st of December, and would have adhered the 8th, but was necessarily absent.

PROTEST by Mr *John Walker* one of the present Bailies, and Mr *James Stuart* late Bailie, and one of the present Members of the Town-council of Edinburgh, for themselves, and in name of those who shall adhere to them, offered in presence of the Magistrates and Town-council of Edinburgh, on *Wednesday* the 8th of *December* 1762, being then in council assembled.

WHEREAS, upon reading over in council the minutes of the last council, on *Wednesday* last, the first of *December*, with relation to the presenting a minister to supply the present vacancy in this city, we observe, that the following clause or words have been added to the minutes of that day, after they were fairly drawn out, and entered in the council-books, viz. " And the council appoint the Lord Provost
" to

“ to transmit the foresaid presentation to the
 “ Reverend Mr John Drysdale for his accept-
 “ ance:” We do assert, that we attended the
 meeting of council on Wednesday last until it was
 dissolved, and that, to the best of our knowledge,
 no such appointment was either proposed, or re-
 solved upon in council, for which we appeal to
 the other members, and others then present:
 on the contrary, on last Friday afternoon, we
 had occasion to see these minutes in the council-
 books, and no such order or appointment was
 then ingrossed therein: And therefore we do
 protest and insist, That this superadded clause
 ought to be expunged, as no act or deed of the
 council; and that it may be inquired into by the
 council, how, by whom, and by whose order
 this addition came to be made in the council-
 books. And thereupon we take instruments in
 the hands of Mr Joseph Williamson, one of the
 principal clerks, and insist, that this our protesta-
 tion be entered in the books of record. Given
 under our hands, at Edinburgh, the eighth day
 of December, One thousand seven hundred and
 sixty-two.

JOHN WALKER, B.

JAMES STUART, O. B.

The adherers to this protest were Deacons
 Somerville and Thomson. Mr Hog and Mr
 Cunningham being absent the first day, could not
 know the facts; and Mr Gibson agrees as to the
 fact protested against, but being absent when the
 protest was taken, could not join in it.

UPON

UPON taking the protest the 8th current against the fabricated minute of the 1st, Bailie James Stuart called upon the Lord Provost, that he should put the question to every one member of council, one after another, and that they putting their hand upon their hearts, should be desired to declare, upon their truth and honour, Whether or not any such order had been made in council, as empowering the Lord Provost to transmit the presentation to Mr Drysdale for his acceptance : but this was carefully avoided ; nor would the Lord Provost and his party allow the vote to be put, whether or not it had passed in council, and consequently whether or not it was truth, which this false minute asserts ; and no one member of the council, except the Lord Provost, took upon them to say, that it was ; only one member said, he thought some such thing was said. The Convener, without affirming any thing positively, said, he thought the presentation was ordered to be given to the Lord Provost, and wanted to know, if that had the same meaning, as appointing him to transmit it to Mr Drysdale. Upon this Bailie Walker and Bailie Stuart inquired at several of the members of council who were sitting nearest them, and had voted for the presentation, if they had heard any such thing pass in council ? and they said, they did not remember it. It is further to be observed, that after the minutes of council of the 1st instant were made up and complete, Bailie Walker and Bailie Stuart applied to see them,
and

and they were accordingly put into the custody of Bailie Stuart upon Friday the 3d, about eleven; he caused his clerk take an exact copy of them, and they remained with him till six o'clock that evening; after which the above clause was adjected by Mr Williamson's order, as he acknowledged in council upon the 8th current, being suggested to him by Hugh Buchan, one of the under-clerks. Mr Williamson did show to Mr Stuart when he came to the committee upon the Friday evening, the clause he had adjected to the minute; which Mr Stuart thought very improper for him to take notice of at that time, as he was resolved to expiscate the truth in open council.

ACT

ACT of the TOWN COUNCIL, dated 6th June 1750, relative to the calling and settling of ministers, referred to in the first protest, is in these words.

Considering that the calling and settling of ministers in this city is a matter of the highest importance, and with this view that it is necessary to preserve and promote harmony among the members of council; do therefore resolve, that in time coming, when any motion is made to them touching the calling of a minister, that nothing shall be done upon such motion sooner than three weeks after it has entered upon record; and then, and no sooner, the council is to take into consideration, whether it is or is not necessary or expedient to proceed in supplying the vacancies of ministers in this city. And, pursuant hereunto, the council do now resolve, that, upon the second Wednesday of *July* next, they will take into consideration the expediency or necessity for supplying the present vacancy of a minister to this city: and do hereby declare, that in case the council shall then deem it fit to delay proceeding in this matter, the same cannot again be brought before them, but upon a new motion to be made in any subsequent council, to be entered on record as above mentioned.

The motion for repealing this act was made and immediately carried into execution in the same breath, and the presentation followed directly upon it, upon the 1st current.